

ELIZABETH HICKETHIER

IBLA 71-100

Decided July 11, 1972

Appeal from decision of Alaska state office, Bureau of Land Management, denying request for reinstatement of trade and manufacturing site claim F-033451.

Set aside and remanded.

Alaska: Trade and Manufacturing Sites

No relief may be granted to extend the time to meet the requirements of improvement and development of a trade and manufacturing site within the time required for the filing of a purchase application.

Equitable Adjudication: Generally

Where a claimant under public land laws involving requirements of settlement or improvement of a claim alleges substantial compliance with the law within a statutory required period, but has failed to submit required proofs of compliance within that time, relief may be afforded under 43 U.S.C. §§ 1161-1164 (1970), and the implementing regulation, 43 CFR Part 1870 (1972), to permit equitable adjudication of late proofs on their merits.

Alaska: Trade and Manufacturing Sites -- Equitable Adjudication: Generally

Equitable adjudication may be invoked to permit consideration of a trade and manufacturing site purchase application which was not filed within the time required where substantial compliance with the law has been alleged and the reason given for the delay in filing the application is compelling.

APPEARANCES: Elizabeth Hickethier, pro se.

## OPINION BY MRS. THOMPSON

Elizabeth Hickethier's appeal is from a decision of the Alaska state office, Bureau of Land Management, dated November 3, 1970, which denied her request for reinstatement of a trade and manufacturing site settlement claim F-033451. The request was denied because the application for purchase was not filed within five years after notice of the claim had been filed, the case was closed, and the land within the claim was considered to be withdrawn pursuant to Public Land Order No. 4582. (34 F.R. 1025 (January 23, 1969)).

Appellant had filed notice of location on October 8, 1964, indicating settlement or occupancy beginning February 1962. Notice was mailed to appellant on April 15, 1969, stating that the five-year statutory life of her settlement claim would expire on October 8, 1969, and a purchase application must be filed before that date. Because no application to purchase the claim had been filed, the state office on October 24, 1969, declared the statutory life of the notice of location expired and closed the case. On September 21, 1970, appellant petitioned for reinstatement of her claim. She alleged that in August 1969 her husband was lost and died in the wilderness near the claim, and that because of her confused emotional state arising from this unfortunate circumstance, she failed to file the purchase application.

In denying her request for reinstatement, the state office construed Public Land Order No. 4582 to have withdrawn the land in the claim when the case was closed; therefore, the claim could not be reinstated.

Appellant contends on appeal that she has occupied, used and improved the land in an outfitting and resort business for over ten years. In effect she requests equitable relief and permission to purchase the tract.

The essential question to be decided on this appeal is whether there is any basis for granting appellant's request for relief.

Purchase of a trade and manufacturing site is permissible under the requirements of section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970) (formerly set forth at 48 U.S.C. § 461 (1958)), which provides that:

Any citizen \* \* \* in the possession of and occupying public land in \* \* \*  
Alaska in good faith for the purpose of trade, manufacture or other productive  
industry may

each purchase one claim \* \* \* upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry \* \* \*.

Section 5 of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970) (formerly set forth at 48 U.S.C. § 461a (1958)), requires claimants to file a notice of occupancy within ninety days from the initiation of the claim in order to be given credit for the occupancy maintained in the claim prior to the filing of the notice or an application to purchase, whichever is earlier. It then provides:

Application to purchase claims, along with the required proof or showing must be filed within five years after the filing of the notice of claim \* \*

If the requirements of the trade and manufacturing site law have not been satisfied within the five-year period and this is evident on the face of a purchase application filed after that time, a purchase application is properly rejected. See, e.g., Gunnar Navjord, A-30637 (December 28, 1966). No relief may be granted to extend the time to meet the requirements of improvement and of development of a site for the purposes of the statute. Don E. Jonz, 5 IBLA 204 (1972).

Here, however, appellant essentially asserts that she complied with the law except for filing the purchase application. This raises the question of whether equitable adjudication may be invoked.

Where a claimant under other public land laws involving requirements of settlement or improvement of the claim alleges substantial compliance with the law within a statutory required period, but has failed to submit the required proofs of compliance within that time, equitable relief may be afforded under the authority of 43 U.S.C. 1161-1164 (1970), and the implementing regulation, 43 CFR Part 1870 (1972). Thus, where appellants have alleged such compliance and have shown compelling reasons for their failure to file the proofs, cases cancelling such claims have been returned to the Bureau of Land Management to permit the claimants to file late proofs for the Bureau to consider on their merits under the equitable adjudication authority. See, e.g., Warrine F. Harden, 5 IBLA 194 (1972) (desert land entry); Juanita J. Anderson, 4 IBLA 170 (1971), and Ruth Gary, A-30329 (August 6, 1965) (homestead entries).

In C. Rick Houston, 5 IBLA 71 (1972), the equitable adjudication authority was specifically invoked to afford relief where a trade and manufacturing purchase application was filed after the five-year

period required by section 5 of the Act of April 29, 1950. The rules permitting equitable adjudication in other types of cases are applicable to trade and manufacturing site claims.

Public Land Order 4582 is not an obstacle to granting equitable relief in this case. That order was amended by Public Land Order 4962, 35 F.R. 18874 (December 11, 1970). Both of these orders have been terminated by the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688). Houston, supra, discussed these orders and the Act, and concluded that the orders did not preclude consideration on the merits of a trade and manufacturing site claim which was initiated prior to the original withdrawal. Appellant's claim falls into this category. See also, Juanita J. Anderson, supra.

As the Bureau did not consider the possibility of equitable adjudication, as appellant appears to be alleging compliance with the law, and as the reason given by appellant for the delay in filing the application is compelling, the Bureau should afford appellant the opportunity to submit her purchase application for consideration under the equitable adjudication provision of the regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is set aside and the case is remanded to the Bureau of Land Management for appropriate action in accordance with this decision.

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Joan B. Thompson, Member

We concur:

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Douglas E. Henriques, Member

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Anne Poindexter Lewis, Member

